

DOC. NO.
91077601

FILED CODE
00004743387

13th

Zoning Case No. C14-91-0038

RESTRICTIVE COVENANT

OWNER: UNIVERSITY COOPERATIVE SOCIETY, INC., a Texas corporation

ADDRESS: 2246 Guadalupe Street, Austin, Texas, 78705.
Attn: George Mitchell, President.

3:09 PM 5659

13.00 IND
2 4 09/04/9
910776.01-DOC

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Tract 1: North 9 foot tract of land out of Lot 14, Outlot 34, Division D, Louis Horst Subdivision, said North 9 foot tract of land being that same tract of land conveyed to University Cooperative Society, Inc., a Texas corporation, and described in the deed recorded in Volume 4420, at Page 2060, of the Deed Records of Travis County, Texas, said deed being attached as "Exhibit A" and incorporated herein for all purposes.

Tract 2: Lot 13, Outlot 34, Division D, Louis Horst Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Book Z, Page 613, of the Plat Records of Travis County, Texas.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions as conditions of zoning for the Property;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its successors and assigns.

1. The [Dabney-Horne] home existing on the Property on the date of the execution of this restrictive covenant shall be retained on the Property.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property at the time of such modification, amendment or termination.

11514 0506

REAL PROPERTY RECORDS
Travis County, Texas

All citations to the Austin City Code shall refer to the Austin City Code of 1981, as amended from time to time, unless otherwise specified. When the context requires, singular nouns and pronouns include the plural.

UNIVERSITY COOPERATIVE SOCIETY, INC.,
a Texas corporation

BY: George Mitchell
George Mitchell, President

Date: July 23, 1991.

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 23rd day of July, 1991, by George Mitchell, President of UNIVERSITY COOPERATIVE SOCIETY, INC., a Texas corporation, on behalf of said corporation.

Denise Linn Sonleitner

Notary Public Signature

Type or Print Name of Notary

My Commission Expires: _____



After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Joe Jimenez, Legal Assistant

WARRANTY DEED

THE STATE OF TEXAS |
COUNTY OF TRAVIS |

KNOW ALL MEN BY THESE PRESENTS:

That, for a good and valuable consideration to me in hand paid by University Cooperative Society, Inc., the receipt of all of which is hereby acknowledged, I, the undersigned, J. BURLESON SMITH, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF RUBY C. SMITH, DECEASED, of Bexar County, Texas, have granted, sold and conveyed and by these presents do grant, sell and convey unto the said UNIVERSITY COOPERATIVE SOCIETY, INC., a Texas corporation of Travis County, Texas, its successors and assigns, the following described premises lying and being situated in Travis County, Texas, to-wit:

Lot No. Thirteen (13) and North Nine (9) feet of Lot No. Fourteen (14), HORST ADDITION, Outlot Thirty-four (34), Division "D", an Addition in the City of Austin, Travis County, Texas, according to the map or plat thereof, recorded in Plat Book 2, Pages 594, and 613, Plat Records of Travis County, Texas.

TO HAVE AND TO HOLD the said premises, together with all rights and appurtenances thereunto in anywise appertaining, unto the said University Cooperative Society, Inc., its successors and assigns, forever. For the same consideration, I, the undersigned, J. Burleson Smith, Independent Executor of the Estate of Ruby C. Smith, Deceased, do covenant and agree that the Estate of Ruby C. Smith, Deceased, will warrant and forever defend title to the said premises against all persons whomsoever lawfully claiming or to claim the same or any part thereof.

The grant hereof is subject to all restrictive covenants, if any, of record in Travis County, Texas, affecting the said premises or any part thereof.

REAL PROPERTY RECORDS
Travis County, Texas

11514 0508

DEED RECORDS

~~1120~~ 2060

SURVEY PLAT

TO ALL PARTIES INTERESTED IN PREMISES SURVEYED:—

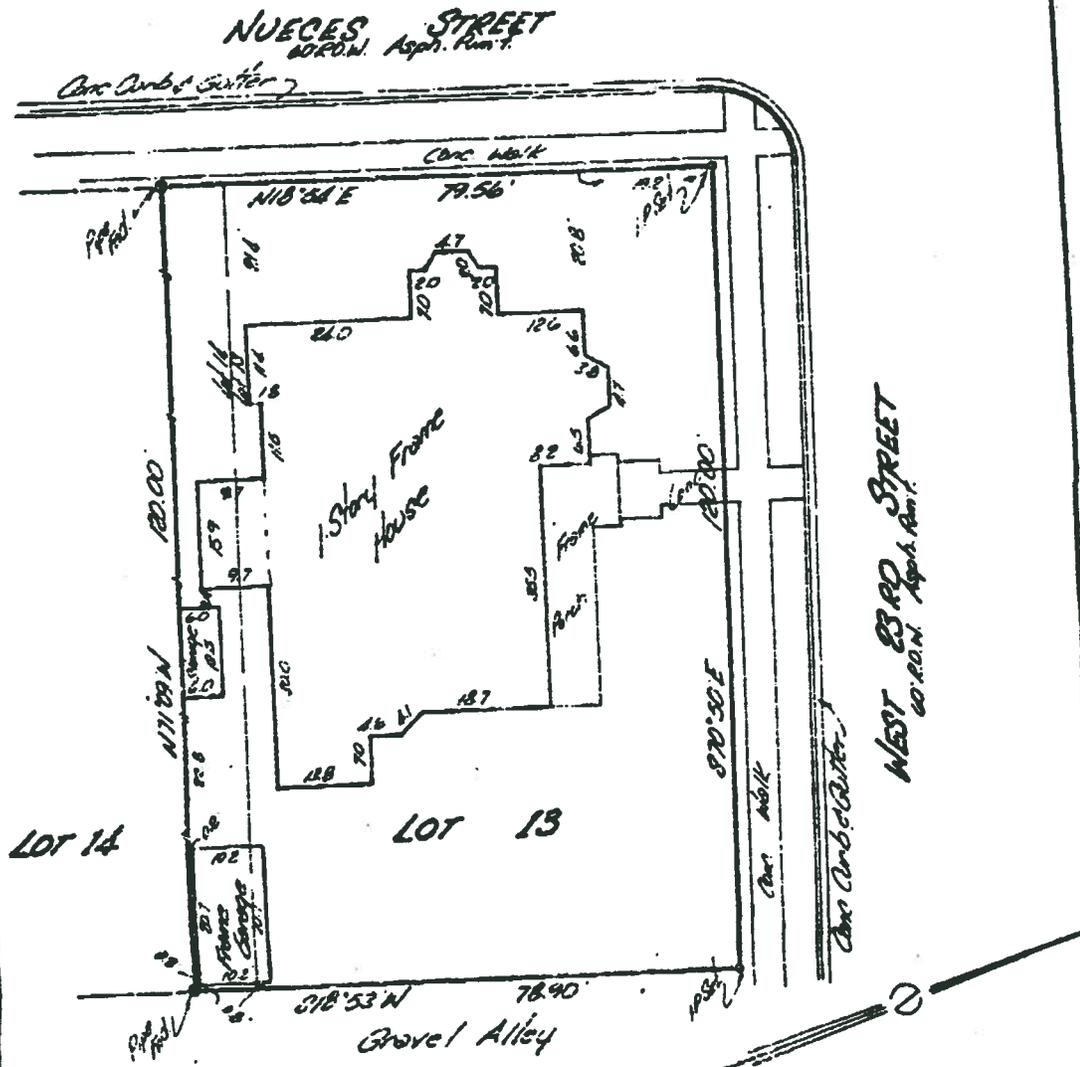
This is to certify that I have, this date, made a careful and accurate survey on the ground of property located at No.

Nueces & W 23rd St. in the City of Austin, Texas being described as follows:

Lot No. 13 & N 9' of lot 14 Block No. _____
 of Louis Horst's Sub. on addition to the City of Austin

Texas, according to the final plat thereof recorded in Vol. 7 at page 594 of the Beed

Records of Travis County, Texas. Ref. Ruby Smith Estate



The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, visible utility easements or roadways, except as shown hereon, and that said property has access to and from a dedicated roadway, except as shown hereon.

There are no encroachments upon this lot.

W. Harvey Smith
 Surveyor
 Austin, Texas 78703

Date Sept. 20, 1971 Invoice No. 18886 Work Order No. 16851

11514 0510

FILED

1991 SEP -4 PM 3 16

DANA DE BEAUNOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
date and at the time stamped hereon by me; and
is duly RECORDED, in the Volume and Page of the
Recorded RECORDS of Travis County, Texas, on

SEP 4 1991



Dana De Beaunoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDER'S MEMORANDUM - At the time of
recording this instrument was found to be inadequate
for the best photographic reproduction, because of
illegibility, carbon or photo copy, discolored paper,
etc. All blockouts, additions and changes were present
at the time the instrument was filed and recorded.

11514 0511

REAL PROPERTY RECORDS
Travis County, Texas

SARAH PUTNAM CROCKER CROCKER CONSULTANTS

9415 Burnet Rd Suite 306

Austin Texas 78758

July 2, 2013

Mr. Greg Guernsey
Director
Planning and Development Review
City of Austin
Austin, Texas 78704

HAND-DELIVERED

RE: Catherine and George Cary/Gerhard-Schoch 1887 LLC/ Interested Party Status

Dear Mr. Guernsey,

I have been retained to represent Catherine and George Cary (Gerhard-Schoch 1887 LLC) with regard to the pending and anticipated future applications for the proposed development of a 170-foot residential tower at 507 W. 23rd Street, which is owned by the University Cooperative Society.

My clients own the historic Gerhard-Shoch house at 2212 Nueces and the adjacent duplex at 2010 Nueces. Due to their proximity to the subject tract, which is directly across the street, my clients meet the criteria for interested parties set forth in 25-1-131, Subsection A (2) (B) of Land Development Code.

Mike McHone, agent for the University Cooperative Society, has filed the following applications for 507 W. 23rd Street.

2013-005629 TP – A request to remove a 31" Heritage Pecan tree. The EV Board recommended disapproval on March 6, 2013. The Planning Commission voted to deny the permit in April.

2013-044283 PR- Request to relocate the historic Dabney-Horne house from it's present location to 1200-02 Cotton Street. The case was postponed at my request at the May meeting of the Historic Landmark Commission. On June 24, Mr. McHone requested a thirty-day postponement. The case is scheduled to appear on the August agenda.

All three properties are located in the Inner West Campus Subdistrict of the UNO Overlay, which was awarded the most permissive site development regulations to encourage the dense development envisioned for this corridor.

My clients were aware this area was in transition when they purchased the property. But it seemed reasonable to assume that the Dabney Horne house would remain in place due to the fact the house and the lot is zoned historic.

My primary concern is the applicant's apparent disregard for the Order of Process set forth in subsection (A) of 25-1-61, which states:

- (A) An applicant must obtain approvals in the following order:
 - (1) Zoning;
 - (2) Subdivision;
 - (3) Site plan; and
 - (4) Building permit.

In 1989 the City initiated historic zoning case C14h-89-0010 over the objections of the owners, who were opposed to the historic designation until such time that they were able to secure the appropriate commercial zoning. The case was postponed indefinitely. In 1991 the University Cooperative Society filed C14-91-0038 to change the zoning at 507 W 23rd Street from MF-4 to GO.

On August 1, 1991 City Council approved a zoning change from MF4 to GO-CO in conjunction, with conditions. George Mitchell, President, of the University Cooperative Society was required to sign a Restrictive Covenant, which requires the Dabney-Horne home to be retained on the property, as it existed on August 1, 1991. The Restrictive Covenant which is recorded in Volume 11514 Page 0506 of the Real Property Records of Travis County can only be amended, modified or terminated by joint action of a majority of the City Council and the owners of the property at the time of such modification, amendment or termination.

Part 2 (1) of Ordinance NO. 910801-C states that..."No structure of any kind shall be built to a height greater than 40 feet above ground level on the Property."

On August 2, 1992 the Council approved the 1989 historic zoning case, which rezoned the Dabney-Horne house and the entire lot to GO-CO-H.

I realize the purpose of the UNO Overlay is to promote high-density redevelopment, particularly in the Inner West Campus Subdistrict. The only rule for redevelopment in the Inner West Campus Subdistrict is there aren't any rules. Every facet of the approval process was streamlined which has resulted in the construction of a number of student housing projects.

However, even 25-2-752 (Conflict of Law) can't trump the restrictions set forth in a recorded Restrictive Covenant or a zoning ordinance that restricts height on a property

because City Council actions aren't subject to this division of the Land Development Code. Neither is 25-1-61, the Order of Process. The current zoning for 507 W. 23rd Street is GO-C0-H-NP (C14-20120021) (Ordinance NO. 0408826-57)

On behalf of my client, I respectfully request that the application to relocate the Dabney-Horne house be withdrawn or suspended immediately and that staff take no further action or accept any application for the property at 507 W 23 St, until the applicant and owner have secured the following:

1. File a Zoning Amendment to terminate Restrictive Covenant (C14-91-0038) that requires the Dabney-Horne house to be retained on site.
2. File a Zoning Case to delete Part 2 (1), Condition Overlay District (Ordinance NO. 910801-C) Limit height of any structure to 40' above ground level.
3. File a Zoning Case to change the zoning from GO-CO-H- NP to GO-CO-NP to remove the historic designation from the entire lot.
4. A Neighborhood Plan Amendment may be required as per Article 16 of 25-1

My clients are not opposed to redevelopment or student housing. By this fall the Gerhard-Shock project will be an active participant in the UT student housing market.

The University Partners portion of the neighborhood plan recognized the need for density but noted there were a number of historically significant structures in this corridor that would and should survive. My clients have made a significant investment in the future by preserving a slice of Austin's history and they are equally committed to the survival of the Dabney-Horne house.

I look forward to hearing from you.

Sincerely,



Sarah Crocker

Authorized Agent

Gerard-Shoch 1887 LLC

CANPAC

Central Austin Neighborhoods Planning Area Committee

July 10, 2013

Chair Laurie Limbacher and Commissioners
Historic Landmark Commission
City of Austin
Post Office Box 1088
Austin, TX 78767-8865
Sent via E-mail

Re: C14H-1989-0010, Dabney-Horne House, 507 W. 23rd Street

Dear Chair Limbacher and Commissioners:

The Plan Team for the Central Austin Combined Neighborhoods Plan (CANPAC) appreciates the postponement of the above case so that we could review it and express our position. At our regular meeting on June 17, 2013 we voted unanimously to oppose removal of the Historic Landmark Dabney-Horne House because it violates promises the owners made that the building would remain in place when the zoning was changed to GO in 1991. Furthermore, relocation of the building would also be contrary to the University Neighborhood Overlay of the CANPAC Plan, which declared the importance of retaining as many historic structures as possible while authorizing high-rise dense development in that area.

Placing the house in a neighborhood in East Austin where its architecture would blend in might seem a good idea, but the historic designation was based on two individuals whose prominence was rooted in the University of Texas and Austin Presbyterian Seminary institutions, located in the immediate vicinity of the house.

We urge you to deny the application for removal. Thank you for your consideration of our recommendation.

Sincerely,

Nuria Zaragoza and Adam Stephens, Co-Chairs
CANPAC Plan Team

CANPAC MEMBERS

Eastwoods Association, Hancock Neighborhood Association, Heritage Neighborhood Association, North University Neighborhood Association, Shoal Crest Neighborhood Association, Caswell Heights Neighborhood Association, and University Area Partners